In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 443

NORMAN LUMBER COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 223 F. 2d 868 (Pet. App. 6-11). The opinion of the district court is reported at 127 F. Supp. 518.

JURISDICTION

The judgment of the court of appeals was entered on June 13, 1955 (Pet. App. 6). The time for filing a petition for certiorari was extended to October 11, 1955, and the petition for a writ of cer-

tiorari was filed October 3, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the title of the United States to land which was acquired by condemnation can be divested by a subsequent conveyance by the condemnee because of failure of the United States to register the condemnation judgment in accordance with the state recordation statute.

STATEMENT

The factual background for this suit by the United States to enjoin petitioner from trespassing upon and cutting and removing timber from lands owned by the United States is as follows:

In 1936, the United States condemned the tract of land here involved in connection with the acquisition of a large area of land in North Carolina for use as the Pisgah National Forest. The tract contained 89.6 acres and was located in Montgomery County. Mary Ann Watkins was named as the owner of the record title. The heirs of E. J. Bruton were also named as defendants and designated as owners of adjoining lands because the perimeter description contained calls to corners and boundaries common to the lands of Bruton. The Bruton heirs did not assert in the condemnation proceeding any claim of title to the lands involved. The condemnation judgment was recorded in the office of the Clerk of the United States District Court in which the suit was brought, and was duly indexed and cross-indexed as to the Bruton heirs.

It was also docketed, indexed and cross-indexed in the office of the Clerk of the Superior Court of Montgomery County, North Carolina, but was not there indexed and cross-indexed as to the Bruton heirs (R. 19-20).[1] The judgment was not registered in the office of the Register of Deeds of Montgomery County, despite a direction therein that this be done.

By warranty deed executed in 1951, the heirs of E. J. Bruton conveyed to petitioner the timber on a tract of land containing 356 acres, which included the 89.6 acres here involved (R. 20, 23). Thereafter petitioner cut down and removed timber from the 89.6 acre tract, claiming to be an innocent purchaser for value without notice of any adverse claim to the timber. In 1953, this action was instituted resulting in a judgment enjoining petitioner and the Bruton heirs from trespassing, or in any manner interfering with the Government's ownership and possession of the land (R. 21). The district court held that whatever title the Brutons had had in this tract had been divested by virtue of the condemnation proceeding, and that it was immaterial that the condemnation judgment had not been indexed and cross-indexed under appropriate state procedures.

The court of appeals affirmed, holding that the rights of the United States under the condemnation proceeding are not defeated as to the petitioner, which obtained a conveyance of the timber

[1] Record references are to Brief and Appendix for Appellant filed in the court of appeals.

fifteen years later, by reason of the fact that the judgment of condemnation was not indexed and cross-indexed as to the Bruton heirs in Montgomery County.

ARGUMENT

The decision of the court of appeals is correct and represents simply another application of the well-settled principle, that in a validly conducted condemnation proceeding, the United States acquires a complete and new title to the land condemned against all the world. *Duckett & Co.* v. *United States*, 266 U.S. 149, 151; *United States* v. *Dunnington*, 146 U.S. 338, 350; *Meadows* v. *United States*, 144 F. 2d 751, 752-753. Such title does not arise from nor depend upon state law or state procedure, and a title thus acquired cannot be divested out of the United States by force of state law without the consent of Congress. *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 403-405; *Camfield* v. *United States*, 167 U.S. 518, 526. Congress can, of course, provide that state laws relating to the docketing of judgments be complied with, but, as the court of appeals pointed out (Pet. App. 8-11), it has not seen fit to do so.

The petitioner's claim that the decision is erroneous is not based upon any attack on the legal reasoning of both courts below, but is founded merely on the assertion that persons examining titles have established a practice of relying upon county records and this practice, it is said, creates a question of grave importance. That there is no real problem, however, is demonstrated by the fact that despite the great number of condemnation proceed-

ings by the United States in the past twenty years, particularly in connection with the prosecution of World War II, the instant case, as petitioner itself recognizes (Pet. 3-4), is the only one to arise.[2] The policy question of weighing the considerations in favor of and those opposed to applying the state law is, as the court of appeals correctly observed (Pet. App. 11), one for Congress and not for the courts.

Finally, petitioner's predicament is attributable to its own actions in dealing with parties who had no interest in the subject land, against whom the condemnation judgment was conclusive, and to whom they should look for redress.

CONCLUSION

The decision below is clearly correct and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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[2] Of course, in the vast majority of cases, the governmental possession will be so obvious to anyone as to give notice of the claim to title.

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